

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Janik, *et al.*

Title: SYSTEM AND METHOD FOR ACTIVATION OF PORTABLE AND
MOBILE MEDIA PLAYER DEVICES FOR WIRELESS LAN
SERVICES

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Examiner: Raymond S. Dean

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

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In accordance with the new Pre-Appeal Brief Conference Pilot Program, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal and with the required fee in response to the Final Office Action dated March 12, 2012.

I. Rejection of Claims 1, 32, 37, and 43 Under 35 U.S.C. § 103(a)

On page 3 of the Final Office Action, Claims 1-2, 4, 6-10, 32-39, 41, 43, and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0065564 to Sheriff et al. (hereinafter "Sheriff") in view of U.S. Patent No. 7,245,649 to Haartsen (hereinafter "Haartsen") and U.S. Patent Application Publication No. 2004/0152450 to Kouznetsov et al. (hereinafter "Kouznetsov"). Applicants respectfully requests reversal of this rejection.

Independent Claim 1 recites, in part, that "the server computer is programmed to: receive, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated" and "cause the wireless transmitter to transmit a signal to initiate the automatic process of content synchronization with the portable device at the predetermined future time" (emphasis added). Independent Claim 32 recites, in part, that "the wireless receiver subsystem is configured to ... respond to the signal received by the wireless receiver ... to perform content synchronization with a server computer ... , wherein the synchronization of the content is performed at a predetermined time specified by a user in response to a command from the server computer" (emphasis added). Although different in scope, independent Claims 37 and 43 recite similar elements. Applicants respectfully submit that Sheriff, Haartsen, and Kouznetsov, alone or in combination, fail to disclose, teach, or suggest such elements.

On page 7 of the Final Office Action, the Examiner acknowledged that “Sheriff in view of Haartsen” does not teach “receiving, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated.” Instead, the Examiner appeared rely on Kouznetsov for its alleged disclosure of such elements. Applicants respectfully disagree with the Examiner’s characterization of Kouznetsov.

Kouznetsov is directed to a “messaging system [that] provides dynamic polling of a message server” (Abstract). Kouznetsov discloses a “messaging system” that includes “computers 20 and 28” controlled by “users 16 and 18” and a “central server 12” that manages messaging between “computers 20 and 28” (see paragraphs [0010] and [0011]; Figure). Paragraph [0012] of Kouznetsov discloses that “computers 20 and 28” include “messaging software application 50.” Paragraph [0013] of Kouznetsov states (with emphasis added):

The messaging system 11 of the present invention ... operates using a message polling technique, where the users' messaging software application, such as software 50 or 52, polls or "calls" the server 12 to determine if message intended for that user are waiting to be delivered.

Paragraphs [0017] and [0018] of Kouznetsov state (with emphasis added):

Individual users can also create a schedule of when to poll for new messages. This allows server 12 to be polled only during the times and days of the week selected by the user, which permits a user to configure message software applications to run on different computers (e.g. home and office) without conflicts, as each computer will only get messages sent within scheduled polling intervals assigned to that particular computer.

Although server 12 operates in a stateless manner, it is of course possible to implement a peer to peer messaging system that maintains open communication sockets between users. Based on user activity, messaging system 11 could implement whichever connection was best suited to the current activity of the users, with such decision being made by either server 12 or the application, e.g., software 50 or 52, residing on the users' computer.

As such, Kouznetsov discloses that the users' “computers 20 and 28” poll “central server 12.” Kouznetsov further discloses that a “schedule of when to poll” may also be created by the users. This schedule appears to be created and maintained at the client/users’ “computers 20 and 28” (which perform the polling). Kouznetsov fails to provide any indication that “central server 12” “receives, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated” and “causes the wireless transmitter to transmit a signal to initiate the automatic process of content synchronization with the portable device at the predetermined future time,” as recited in Claim 1, or that “the synchronization of the content is performed at a predetermined time specified by a user in response to a command from the server computer,” as recited in Claims 32, 37, and 43 (emphasis added). A client computer that polls a server

computer at scheduled times is not the same as a “server computer” that “receives, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated” and “causes the wireless transmitter to transmit a signal to initiate the automatic process of content synchronization with the portable device at the predetermined future time,” as claimed.

On page 3 of the Final Office Action, the Examiner further stated that:

Modifying the polling process of Sheriff with the polling technique of Kouznetsov renders a scenario wherein the time of the polling process of Sheriff is selected by a user. Since the automatic synchronization is tied to said polling time, the automatic synchronization time is effectively selected by the user. This modification renders a server with the above feature.

However, in making the above argument the Examiner appears to ignore and/or mischaracterize the plain language of the claims. The claims do not recite an “automatic synchronization time [that] is effectively selected by the user.” To the contrary, Claim 1 recites, in part, that “the server computer is programmed to: receive, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated” and “cause the wireless transmitter to transmit a signal to initiate the automatic process of content synchronization with the portable device at the predetermined future time” (emphasis added). Nowhere does Sheriff or Kouznetsov disclose, teach, or suggest a “server computer” that “receive[s], from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is initiated.” To obtain such an element would require further modification of Sheriff and/or Kouznetsov that is not taught or suggested by Sheriff or Kouznetsov. Namely, one of these references would need to be modified such that a “server computer” receives “predetermined future time[s] selected by a user” at which the various recited actions are performed. However, neither Sheriff, Haartsen, nor Kouznetsov disclose, teach, or suggest such a thing.

Instead, as discussed above, Kouznetsov discloses that remote client computers 20 and 28 poll the server at predetermined times. Kouznetsov does not provide any indication that a “predetermined future time selected by a user at which an automatic process of content synchronization is initiated” is communicated to or received by the “central server 12” of Kouznetsov. Merely because Kouznetsov teaches that a user may “create a schedule” of when a client computer is to poll a server does not mean that it would have been obvious for a “server computer” to “receive, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated” and “cause the wireless transmitter to transmit a signal to initiate the automatic process of content synchronization with the portable device at the predetermined future time,” as claimed. For at least the foregoing reasons, Applicants respectfully submit that the combination of Sheriff, Haartsen, and Kouznetsov fails to disclose, teach, or suggest at least one element recited in each of independent Claims 1, 32, 37, and 43 (and their associated dependent claims).

II. Rejection of Claims 32-39, 41, 43, and 45 under 35 U.S.C. § 103

On page 10 of the Final Office Action, Claims 32-39, 41, 43, and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheriff in view of Haartsen, Kouznetsov, and U.S. Patent No. 6,940,833 to Jonas *et al.* (hereinafter “Jonas”). Applicants respectfully request reversal of this rejection.

As discussed above, independent Claim 32 recites, in part, that “the wireless receiver subsystem is configured to ... respond to the signal received by the wireless receiver ... to perform content synchronization with a server computer ... wherein the synchronization of the content is performed at a predetermined time specified by a user in response to a command from the server computer” (emphasis added). Independent Claims 37 and 43 recite similar elements. Applicants respectfully submit that Sheriff, Haartsen, Kouznetsov, and Jonas, alone or in combination, fail to disclose, teach, or suggest such elements.

On page 13 of the Final Office Action, the Examiner acknowledged that Sheriff and Haartsen do not teach “receiving, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated.” Instead, the Examiner relied on Kouznetsov for its alleged disclosure of such an element, specifically citing “sections 0017 lines 1-4, 0018 lines 1-4” of Kouznetsov. As discussed above, Applicants respectfully disagree with the Examiner’s characterization of Kouznetsov.

Kouznetsov discloses that the users’ “computers 20 and 28” poll “central server 12” (see paragraphs [0013], [0017], and [0018]). Kouznetsov further discloses that a “schedule of when to poll” may also be created by the users (see paragraphs [0013], [0017], and [0018]). This schedule appears to be created and maintained at the client/users’ “computers 20 and 28” (which perform the polling). Kouznetsov fails to provide any indication that “the synchronization of the content is performed at a predetermined time specified by a user in response to a command from the server computer,” as recited in Claims 32, 37, and 43 (emphasis added). Polling of a server computer by a client computer at scheduled times is not the same as performing “the synchronization of content ... at a predetermined time specified by a user in response to a command from the server computer,” as claimed.

On page 14 of the Final Office Action, the Examiner relied on column 8, lines 20-22 and 53 Jonas apparently for its alleged disclosure of “the substituted step of acquisition of the time of day from a server computer.” Jonas is directed to a “two dimensional scheduler [that] integrates the allocation of both the time domain and the channel domain for upstream communication in a broadband wireless access system.” Column 8, lines 20-22 and 53 of Jonas states:

A preferred embodiment of the wireless modem initialization procedure utilizing the functions of the present invention comprises (referring to FIG. 3): ... 3.2 Acquiring Time Of Day from the time server.

As such, Jonas appears to merely state that the time of day may be acquired from a “time server.”

On page 3 of the Final Office Action, the Examiner stated that “Jonas was cited for its teaching of the command of the time of day being received from the server.” Applicants respectfully submit that Jonas does not appear to disclose, teach, or suggest any elements that are relevant to the present rejection. As discussed above, Jonas merely discloses that a “time of day” may be acquired from a “time server.” However, acquiring the time of day from a specialized server is very different from “receiving, from a user interface, a predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated.” The “time of day” of Jonas is not a “predetermined future time,” but rather is the current time. The “time of day” of Jonas is not “selected by a user,” and the “time of day”

of Jonas is not indicative of a time "at which an automatic process of content synchronization is to be initiated."

As discussed above, Kouznetsov discloses that users' "computers 20 and 28" poll a "central server 12." The schedule of when to poll appears to be created and maintained at the client/users' "computers 20 and 28" of Kouznetsov. Jonas merely discloses that a "time of day" may be acquired from a "time server." Neither Kouznetsov, Jonas, nor their combination disclose, teach, or suggest a "predetermined future time selected by a user at which an automatic process of content synchronization is to be initiated" which is received "from a user interface." Likewise, the applied references fail to disclose, teach, or suggest that "the synchronization of the content is performed at a predetermined time specified by a user in response to a command from the server computer," as recited in Claims 32, 37, and 43. Applicants therefore respectfully request reconsideration and withdrawal of the rejection of Claims 32-39, 41, 43, and 45 were rejected under 35 U.S.C. § 103(a).

III. Rejection of Claims 31, 40, 42, 44, and 46-48 under 35 U.S.C. § 103(a)

On pages 18-21 of the Final Office Action, Claims 31, 40, 42, 44, and 46-48 were rejected under 35 U.S.C. § 103(a) over Sheriff, Haartsen, and Kouznetsov in view of various additional references. For example, Claim 31 was rejected over Sheriff, Haartsen, and Kouznetsov in view of U.S. Patent Application Publication No. 2004/0029621 to Karaoguz *et al.* (hereinafter "Karaoguz"). Claims 47 and 48 were rejected over Sheriff, Haartsen, and Kouznetsov in view of U.S. Patent No. 6,993,587 to Basani *et al.* (hereinafter "Basani"). Claims 40 and 44 were rejected over Sheriff, Haartsen, Kouznetsov, and Jonas in view of U.S. Patent No. 5,812,942 to Allen *et al.* (hereinafter "Allen"). Claims 42 and 46 were rejected over Sheriff, Haartsen, Kouznetsov, and Jonas in view of U.S. Patent Application Publication No. 2002/0066018 to Linnartz (hereinafter "Linnartz").

Claims 31, 40, 42, 44, and 46-48 depend variously from independent Claims 1, 37, and 43. As discussed above, the combination of Sheriff, Haartsen, and Kouznetsov fails to disclose, teach, or suggest at least one element recited in Claim 1, and the combination of Sheriff, Haartsen, Kouznetsov, and Jonas fails to disclose at least one element recited in Claims 37 and 43. Karaoguz, Basani, Allen, and Linnartz fails to cure the deficiencies of Sheriff, Haartsen, Kouznetsov, and Jonas. Applicants therefore respectfully request withdrawal of the rejection of Claims 31, 40, 42, 44, and 46-48.

For at least the foregoing reasons, Applicants respectfully submit that Sheriff, Haartsen, Kouznetsov, Jonas, Allen, and Linnartz, alone or in combination, fail to disclose, teach, or suggest the combination of elements recited in each of independent Claims 1, 32, 37, and 43 (and their various associated dependent claims). Applicant therefore respectfully requests reversal of the rejection of Claims 1, 2, 4, 6-10, and 31-48 under 35 U.S.C. § 103(a).

Respectfully submitted,

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